

DIVISION I

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
LARRY D. VAUGHT, Judge

CA06-53

August 30, 2006

GARY CHEATHAM

APPELLANT

APPEAL FROM THE ARKANSAS  
WORKERS' COMPENSATION  
COMMISSION  
[NO. F309903]

V.

BARLOWORLD HANDLING and  
LIBERTY MUTUAL INSURANCE  
COMPANY

AFFIRMED

APPELLEES

Appellant Gary Cheatham appeals from the decision of the Arkansas Workers' Compensation Commission finding that he failed to prove by a preponderance of the evidence that he suffered a compensable injury to his neck. He argues on appeal that the Commission's decision was not supported by substantial evidence. We disagree and affirm.

On September 7, 2003, Cheatham was working as a diesel mechanic for Barloworld Handling when a brake chamber exploded and struck him in the face, causing severe injuries to his nose and face. He was initially seen at the emergency room by Dr. Moon. There, Cheatham had x-rays taken, was given pain medication, and was released. He returned to work three days after the incident. Later, Cheatham saw several doctors, including Dr. Cashman, regarding his nose. Appellees accepted Cheatham's injuries to his nose and face

as compensable and paid for his medical treatment.

In January 2004, Cheatham changed jobs and went to work for another company. He continued to see Dr. Cashman, as well as several other physicians. In August 2004, Cheatham saw a chiropractor, Dr. Butler, who referred him to Dr. Blankenship for an MRI. The results of the MRI revealed spondylosis and disc herniation in Cheatham's cervical spine. He then saw Dr. Danks, who recommended Cheatham have surgery to correct the problems.

Cheatham testified that after the accident, his nose and eyes hurt "bad for a long time." He stated that he hurt "all over" and the "pain never really got better." He said that he began having headaches and that over time, he was able to single out what hurt—specifically his head, neck, and arms. Cheatham admitted that his neck pain was not continuous since September 7, 2003. He estimated that he noticed his neck pain sometime after he left his job with Barloworld in January 2004 and before October 2004, but he was not sure when he first noticed it. Cheatham explained that he had asked Dr. Moon if his neck pain could be the cause of the headaches, but Dr. Moon said that they were not connected. Although Cheatham admitted that he had sought chiropractic care for many years before his accident, including care for neck pain, he claimed that the neck pain he had suffered since the 2003 injury was different. He also admitted that he had been involved in a serious automobile accident years before, where he sustained injuries to his face and nose. He stated that he would not dispute doctor's records that reflected he had complained of neck pain prior to his 2003 accident.

Medical records indicate that Cheatham did not complain of neck pain when he was examined in late 2003 following the accident at Barloworld. The records reveal that he first complained of neck pain in August 2004, almost a year after the accident occurred. Additionally, Dr. Blankenship's medical report from September 2004 illustrates that "it is difficult to state as to whether his acute disc herniations or sub-acute disc herniations are

related to his accident or not.” Moreover, those records demonstrate that Cheatham had received extensive chiropractic care from as far back as 1985 where he complained of neck pain. Dr. Danks did opine that Cheatham’s neck pain was causally connected to the accident; however, he was under the impression that Cheatham had suffered neck pain continually since the accident.

The Commission found that Cheatham failed to prove a compensable injury with regard to his neck. The Commission based its decision on the fact that Cheatham had suffered from neck pain for many years prior to the accident, that the medical records immediately following the accident did not mention complaints of neck pain, that Cheatham’s first complaint of neck pain did not show up in the medical records until a year after the incident, that Dr. Blankenship opined that it was difficult to associate the neck pain with the accident, and that Dr. Danks’s opinion was based on faulty facts.

When reviewing a decision of the Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the findings of the Commission, and we affirm that decision if it is supported by substantial evidence. *Searcy Indus. Laundry Inc. v. Ferren*, 82 Ark. App. 69, 110 S.W.3d 306 (2003). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Id.* at 72, 110 S.W.3d at 307. We will not reverse the Commission’s decision unless we are convinced that fair-minded persons with the same facts before them could not have reached the conclusions arrived at by the Commission. *Id.*, 110 S.W.3d at 307. In making our review, we recognize that it is the function of the Commission to determine the credibility of witnesses and the weight to be given their testimony. *Id.*, 110 S.W.3d at 307. Furthermore, the Commission has the duty of weighing medical evidence and, if the evidence is conflicting, its resolution is a question of fact for the Commission. *Id.*, 110 S.W.3d at 307.

Cheatham has the burden of proving, by a preponderance of the evidence, that his claimed injury was causally related to a specific work-related accident. Ark. Code Ann. § 11-9-102(4)(A) (Repl. 2002). The determination of whether a causal connection exists is a question of fact for the Commission. *Jeter v. B.R. McGinty Mech.*, 62 Ark. App. 53, 968 S.W.2d 645 (1998).

We believe there is substantial evidence to affirm the Commission's decision that Cheatham failed to prove that his injury was compensable. Cheatham did not report any neck pain until almost a year after the incident. Additionally, chiropractic records indicate that he had suffered from neck pain for years prior to his accident in 2003. Although Cheatham claimed he was in so much pain that he could not be specific about what hurt, the medical records indicate that he was very specific to his various doctors about what hurt. Cheatham himself admitted that he did not notice the neck pain until after he had left his job at Barloworld. Additionally, there is no mention of neck pain or injury in the medical records immediately following the accident, and Dr. Blankenship theorized that his neck injury and the accident were not related. The only doctor who did opine that they were related misstated the facts—saying that Cheatham suffered from neck pain continuously since the September 2003 accident. Therefore, we hold that the Commission did not err in finding Cheatham failed to prove by a preponderance of the evidence that his neck injury was compensable.

Affirmed.

HART and NEAL, JJ., agree.